D.B. CIVIL SPECIAL APPEAL(W)NO.1225/2006

Nand Kishore
Vs.
The State of Rajasthan & Ors.

DATE OF ORDER :: 22-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri R.S. Bhadauria, for the appellant.

This appeal is directed against the order of the learned Single Judge dated 23.5.2005 dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the punishment of stoppage of one annual grade increment with non-cumulative effect. The disciplinary authority had stopped two annual grade increments, which was reduced to one grade increment by the appellate authority.

The impugned order was passed in a departmental proceeding which was initiated against the petitioner on three charges. While the first and third charge were found not proved, the second charge namely overstay in the government quarter for one year was found proved.

Counsel submitted that the appellant was not provided accommodation at Bikaner where he had been transferred. He was also not paid salary for non-issuance of LPC. In the circumstances, it was not possible for the appellant to vacate the quarter at Jaipur.

Counsel also submitted that the penal rent to the extent of Rs.21,000/- is being recovered from the appellant and the punishment amounts to double jeopardy. It was submitted that in the ordinary course the appellant would have received house rent allowance; in stead, he is forced to pay penal rent.

We find no substance in the contentions whatsoever. Non-issuance of LPC or non-release of salary to the appellant on his transfer to Bikaner are not issues in these proceedings. It was open to the appellant to take recourse to legal remedies and seek direction for issuance of LPC and release of salary. The departmental proceeding was initiated on a definite charge, namely, overstay in the government quarter. The fact that penal rent is being recovered from the appellant noway mitigates the misconduct committed by the appellant. Overstay amounts to misconduct for which proceeding can be initiated whereas recovery of penal rent is consequence of the relevant rule. We thus find no conflict.

The learned Single Judge therefore did not commit any error in dismissing the writ petition. The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen